

HOUSE BILL REPORT

HB 1801

As Reported by House Committee On:
Economic Development, Agriculture & Trade

Title: An act relating to a state real estate excise tax exemption for certain farm and agricultural land.

Brief Description: Providing a real estate excise tax exemption for certain farm and agricultural land.

Sponsors: Representatives Grant, Kretz, Linville, Orcutt, Morrell, Buri, Quall, Kristiansen, Holmquist, Cox, Hasegawa, McCune, Eickmeyer, Condotta, Dunn, Walsh, Haigh and Newhouse.

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 2/15/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Exempts from the state real estate excise tax certain sales of farm and agricultural lands.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Blake, Buri, Chase, Clibborn, Condotta, Dunn, Grant, Haler, Holmquist, Kenney, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow, P. Sullivan and Wallace.

Staff: Meg Van Schoorl (786-7105).

Background:

Real Estate Excise Tax

The real estate excise tax (REET) applies to sales of real property in the state and to transfers of controlling interests in entities that own real property in the state. For the purpose of the REET, real property includes any interest, estate, or beneficial interest in land or anything affixed to land.

The amount of tax due is based on the selling price, including any liens, mortgages, or other debts of the real property sold. The state tax rate is 1.28 percent. After a deduction for administrative costs at the county level, 7.7 percent of the proceeds are deposited to the public works assistance account and the balance is deposited to the State General Fund. There are also optional local REETs; the rates vary by jurisdiction and range from 0.25 percent to 1.5 percent. Some cities and counties impose no REET.

The Department of Revenue (Department) is generally responsible for the REET, including promulgation of rules, preparation of the affidavit form, and enforcement actions. County treasurers collect the state and local taxes, except for the tax that applies to acquisition of the controlling interests.

The REET is typically paid by the seller, although the buyer is liable for the REET if it is not paid. Penalties and interest apply if the tax is not paid within 30 days from the date of the sale. Administration of the REET begins following a sale of real estate when an affidavit is filed along with the applicable tax at the treasurer's office in the county in which the real property is transferred or sold. The affidavit is required to contain the identification of the buyer and seller, a description of the parcel, the selling price, and other information about the property. An exception to this process occurs when the tax is triggered by a transfer in the controlling interest of property; in that case, the tax and affidavit are submitted directly to the Department.

According to the Department, collections of the state REET in Fiscal Year 2004 amounted to \$615.6 million. According to data reported by local governments to the State Auditor, local REET collected during calendar year 2003 amounted to \$213.6 million (cities: \$128.4 million; counties: \$ 85.2 million).

Definitions of "farmer" and "farm and agricultural lands"

A "farmer," as defined in RCW 82.04.213(2), is a person engaged in the growing, raising, or producing, upon the person's own lands or those in which the person has a present right of possession, any agricultural product to be sold.

"Farm and agricultural land," as defined in RCW 84.34.020(2)(a), is one parcel or multiple contiguous parcels totaling 20 acres of land or more that are devoted primarily to production of livestock or agricultural commodities for commercial purposes, or enrolled in the United States Department of Agriculture Conservation Reserve Enhancement Program, or engaged in similar commercial activities established by rule.

Summary of Substitute Bill:

A sale of a farm and agricultural land is exempted from the state real estate excise tax when it meets the following conditions: (1) the purchaser of the real property is a farmer as defined in RCW 82.04.213(2) who has averaged \$250,000 or less in annual gross receipts from sales of agricultural products over the last five years and who, along with his or her family, provides a

majority of the daily labor for or management of the farm for at least 10 years following the sale; and (2) the farm and agricultural land as defined in RCW 84.34.020(2)(a) is not converted to a different purpose or use within 10 years of the sale.

To verify initial and continuing eligibility for the exemption, the purchaser must submit tax documents and affidavits to the county treasurer and to the Department of Revenue (DOR). The county treasurer will act as an agent of the state to approve the initial exemption. In addition to annual affidavits, there will be a lien placed upon the property from the time of sale until the time that all obligations have been met. The county treasurer will record the lien with the county auditor and send the lien, supporting tax documents and affidavits to the DOR.

Within 10 years of the sale, the person who claimed the exemption must pay the entire amount of tax that would have been due at the time of sale plus interest if: (1) the person no longer meets the qualifications for the exemption; (2) the use of the land no longer meets the qualifications for the exemption; or (3) the person sells the property to an unqualified purchaser. Penalties for nonpayment of taxes and interest will also be assessed beginning 30 days following the date of disqualification. If acts or circumstances not attributable to the purchaser cause the disqualification to occur, the purchaser will not have to pay additional taxes, interest or penalties.

The proposed exemption does not apply to the local REET.

Substitute Bill Compared to Original Bill:

If a person who was granted a REET exemption sells the property to an unqualified purchaser during the 10 years following the sale, the person must pay taxes and interest. Penalties will be assessed for nonpayment of these taxes and interest. Certain tax documents and affidavits must be submitted by the purchaser, to the DOR, and county treasurer to verify initial and ongoing eligibility. These documents are non-disclosable taxpayer information. The county treasurer acts as agent for the state in approving the initial exemption. A lien will be placed upon the property in the amount of tax claimed as exempt from the time of sale until all conditions for exemptions are met. The county treasurer records the lien with the county auditor and transmits it and supporting documents to the DOR.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2005.

Testimony For: (In support of original bill) The idea for this bill came from the Farm Bureau's Young Farmer/Rancher Committee. I am the fourth generation on my family's farm, married with a young son; however, our ranch will not support both my parents and my family, so we will not be able to stay on the ranch. This bill would give young farmers an

opportunity to access farm lands that are under the \$250,000 to leverage in, purchase a little more, expand their operation, have more cash flow, have a better living. The average age of a farmer is 55. Ninety percent of farmers in Washington gross under \$250,000 per year, from which the average net income is less than \$20,000, which is poverty in most parts of the country. There are economic benefits to keeping land under agricultural production. A Washington State University study showed that for every steer sold, \$2,300 of business is brought to Main Street. Another study from Montana showed that the money that is earned from agriculture in this country is turned over six times in the economy, whereas if food is imported, it is only two or three times. Young farmers cannot compete with developers or non-government organizations that have deep pockets. One of the goals of the Growth Management Act is to keep agricultural lands in production. This is another tool to do the same. House Bill 1801 provides an incentive to keep agricultural land in production. Rural county commissioners in the 7th district support this bill. It only affects the state portion of the real estate excise tax so as to not impact the county revenues since they are in tough condition too.

(With concerns on original bill) The County Treasurers Association loves the intent of the bill encouraging people to stay in local, small businesses. Our very big concern is who and how should administer, track and enforce the requirement that for 10 years the land and purchaser must remain qualified? What is the treasurer to do with the four to five years of IRS statements? Who enforces the provisions? Probably the assessor would be the trigger but these are two different county offices and this is where expense comes to local government. We would be happy to work with the prime sponsor to make the bill more mature. The DOR shares the treasurers' trepidations regarding the 10-year enforcement aspect. To complete the fiscal note, the DOR surveyed certain agricultural counties in both western and eastern Washington and projected these out to the entire state. From this survey, we anticipate that there will be several hundred transactions per year times 10 years that would be eligible. Determining whether or not the family is providing labor or management and reviewing the income tax returns for 10 years is a significant concern. We would be happy to work to further the intent but overcome the enforcement problems.

Testimony Against: None.

Persons Testifying: (In support of original bill) Representative Grant, prime sponsor; Representative Kretz; and Chad Henneman, Cattle Producers of Washington.

(With concerns on original bill) Ken Madsen, Pierce County Assessor-Treasurer; and Suzanne Mager, Washington Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.